EXHIBIT 71

MICHAEL J. STONNINGTON, M.D.
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re Bair Hugger Forced-Air Warming Products liability Litigation

MDL NO. 15-2666 (JNE/FLN)

This Document Relates To:
All Actions

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VIDEOTAPED DEPOSITION OF
MICHAEL J. STONNINGTON, M.D.

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APPEARANCES NOTED HEREIN

TAKEN AT INSTANCE OF: 3M COMPANY AND ARIZANT HEALTHCARE INC.
DATE: JULY 21, 2017
PLACE: PAGE, MANNINO, PERESICH & MCDERMOTT
759 HOWARD AVENUE
BILOXI, MISSISSIPPI
TIME: 8:59 a.m.

JOB NO. 124788
REPORTED BY: CONNIE CHASTAIN, RMR
CSR No. 1025

VIDEOTAPED BY: MARCEL LANOUX

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MICHAEL J. STONNINGTON, M.D.

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EXHIBITS

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(Exhibits 1 through 6 were marked.)

VIDEOGRAPHER: We are now on record at 8:59 a.m. Today's date is July 21st, 2017. Here begins the videotaped deposition of Michael Stonnington in the matter of Bair Hugger Forced-Air Warming Products Liability Litigation.

This case is being held in the U.S. District Court, District of Minnesota, MDL Number 15-2666 (JNE/FLN). This deposition is taking place at Page Mannino Law Firm in Biloxi, Mississippi.

My name is Marcel Lanoux, videographer present on behalf of TSG Reporting. The court reporter is Connie Chastain, also of TSG Reporting.

Counsel, please identify yourselves and whom you represent.

MR. LEWIS: I'm Deborah Lewis representing 3M Company and Arizant.

MR. GORDON: I'm Ben Gordon and I represent the Plaintiffs and the Plaintiffs' Steering Committee.

MR. MCGARTLAND: Mike McGartland for

So authoritative, in all my upbringing in science, I think it's rare to find anything, quote, authoritative.

Q. What about your textbooks in medical school?

A. That's a tree.

Q. I'm sorry?

A. They're a tree. That means there are trees in the forest.

Q. Are they authoritative?

A. That's what I'm saying, I don't like the use of that word and I'm not going to give in on the use of that word. In science you have to look at everything as a big picture. The mistakes we make in science and -- is something that I've been learning ever since I was a little boy.

My dad was an academic doctor, actually at the Mayo Clinic, and when he was bringing me up he was always teaching me these principles, and so I really learned a lot from him.

And through my years of training and studying, the take-home message is in science, if you look at something and treat it as a smoking gun, which is basically what that word means, you're

going to make mistakes.

So you have to look at everything in the context of a big picture. That's why I love the analogy of the forest. And you have to look at -- you look at each tree, but you don't look at it without understanding the rest of the trees in the forest.

And so that's why I'll never give in on that word, because I think it will take you down a road that you don't want to go and you might lead -- it might lead you to an untruth.

Q. All the studies and/or articles on which you rely for your opinions, then none of those are authoritative. Is that what you mean?

MR. GORDON: Object to the form.

A. They are important, and I'll give in on that word. Those studies are important, but you don't want to hang your hat on one single study. And I'll never do that.

MR. LEWIS:

Q. Is the Albrecht study authoritative, in your opinion?

MR. GORDON: Objection, asked and answered.

A. No, ma'am. I just said it's a very important study.

MS. LEWIS:

Q. But you don't consider it authority?

MR. GORDON: Object to the form.

A. I consider Mr. McGovern an authority on the subject matter he's writing, but I don't consider any single study a smoking gun or in that word, authoritative.

You are going to go down a wrong pathway as a scientist if you do that. You you have to look at that study in the context of other studies.

MS. LEWIS:

Q. My question was --

A. But not just studies, you have to look at that study in the context of real world experiences and your training and the treatment of your patients and your own data as a surgeon.

I read studies all the time and I look at them and go, whoa, that's not my experience. Then I have to step back and look and say why is that study saying this but that's not my experience.

So then I have to look at other things to try to figure out how they came to that conclusion.

It is very, very dangerous to treat one study as a smoking gun. And that's why that's not a good word to use in medicine or science.

Q. Let me just go through some of the studies I believe you reviewed and you can answer --

A. Sure.

Q. -- yes or no, they're authoritative. And if you don't like that word I guess your answer would be no. Okay?

MR. GORDON: I'm going to object to the form because I think he has covered that. And if you want to ask about every other study and waste your time that way, that's your prerogative, but he's answered. So it's asked and answered.

MR. LEWIS: Ben, you're wasting time by all your side objections, so.

MR. LEWIS:

Q. Is the Albrecht study published in 2009, Forced-Air warming, a source of airborne contamination in the operating room --

MR. GORDON: Objection, form, asked and answered.

MR. LEWIS:

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Q. Is it authoritative or not?

MR. GORDON: Objection, asked and answered.

A. It's a very important study, but it's not authoritative by itself.

MR. LEWIS:

Q. Is the Albrecht study published in 2011, Forced-Air warming blowers: evaluation of filtration adequacy and airborne contamination emissions in the operating room, is that authoritative or not?

MR. GORDON: Object to the form, asked and answered.

A. Were you quoting the Albrecht 2011 study?

MS. LEWIS:

Q. Yes.

A. It's a very important study. It's a very important tree in the forest, but it's not authoritative by itself. Just like that tree in the forest is not authoritative by itself.

Q. Is the study first authored by Belani, Patient warming excess heat: the effects on orthopedic operating room ventilations performance, is that authoritative?

MR. GORDON: Object to the form, asked

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and answered.

A. Again, very important study, makes very important findings but I have to step back from that study and realize that it's a study amongst other studies and it's a very important study but by itself cannot be taken as authoritative.

MR. LEWIS:

Q. The study by Legg in 2012, Do forced-air warming devices disrupt unidirectional downward air flow, is that authoritative or not?

MR. GORDON: Object to the form.

A. Very important study but not authoritative by itself.

MS. LEWIS:

MR. GORDON: Are you going to just cherry pick out the ones that you don't like or are you going to ask about all 89 and we'll stipulate he's going to say that 89 times?

MR. LEWIS:

Q. The study published by Legg in 2013, Forced-Air patient warming blankets disrupt unidirectional air flow, is that study authoritative or not?

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MR. GORDON: Same objection.

A. Very important study and, again, by itself not authoritative, but no scientific study lives in a vacuum or on an island by itself. You have to look at the forest.

MR. LEWIS:

Q. Is the study by Reed published in 2013, Forced-Air warming design: evaluation of intake filtration, internal microbial buildup, and airborne-contamination emissions, is that article authoritative or not?

MR. GORDON: Object to form, asked and answered.

A. Again, very important study, not authoritative by itself.

MR. LEWIS:

Q. The study published by McGovern in 2011, Forced-Air warming and ultra clean ventilation do not mix, is that study authoritative or not?

A. Very important study, not authoritative by itself.

MR. GORDON: Same objection, but I didn't say it. Eighty-nine objections?

MR. LEWIS:

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Q. You've been testifying that these studies by themselves are not authoritative, so let me put them all together and ask you this question. Do you believe the joint combination of Albrecht 2009, Albrecht 2011, Belani 2013, Legg 2012, Legg 2013, Reed 2013, McGovern 2011, do all those studies combined make them authoritative?

MR. GORDON: Objection to form.

A. No, ma'am. Those are very important studies combined together that are now a group of trees in the forest, but that forest isn't complete with those studies alone.

MR. LEWIS:

Q. So all those combined, you still don't believe combined they are authoritative; correct?

MR. GORDON: Object to form.

A. There are a large group of trees in the forest, but it's not yet a forest.

MR. LEWIS:

Q. Is that authoritative or not?

MR. GORDON: Object to the form.

A. The whole forest is authoritative, and so just to say again, as a surgeon, as a doctor, as a scientist with lots of years of training by very

famous scientists, you have to take the whole picture.

The whole picture is not just laboratories, it's not just clinical studies. The whole picture involves -- it really starts with the doctor and the patient in the clinic room. So that whole forest begins there when I'm treating a patient.

It also involves my clinical training. It also involves the techniques I use in the operating room. It also involves the setup of the operating room. It also involves the nursing staff and how they're trained. It also involves the surgical technicians and how they're trained.

This is a big forest and you have to take all of that into consideration. So part of that forest are the journal articles, part of that forest are the clinical studies, part of that is the laboratory studies, but that's not the whole thing.

So when I make my decision about something, it incorporates all that. So when I put all that together, that forest, that's authoritative.

MS. LEWIS:

Q. So these articles, as you started at the beginning, you said the forest is authoritative, so

that includes these studies; is that correct?

MR. GORDON: Objection to form, asked and answered. It's not his previous testimony.

A. To repeat, they're part of the forest, but you cannot look at all the conglomeration of studies as the whole forest.

MR. LEWIS:

Q. I heard that but what I'm saying is -- my question is very specific about these articles. I understood you to say about a minute ago that the forest is authoritative and the forest includes these studies; correct?

A. They include very important trees and those articles are some of those trees.

Q. That are --

A. So they're very important.

Q. That are authoritative?

MR. GORDON: Objection to form.

A. No, ma'am. The -- the forest is authoritative. Those are trees in a forest but we're building a forest.

MR. LEWIS:

Q. These articles that I separated out and

spoke to you about, those articles alone, just looking at those articles, does the combination of just those articles, are those articles together authoritative?

MR. GORDON: Objection to form.

A. No, ma'am.

MR. LEWIS:

Q. Okay.

A. They are part of a very important picture. They're very important trees in the forest. And so --

Q. I understand.

MR. GORDON: Let him finish. You can finish.

A. So part of my job, a part of one of the things I do and love is I have a cattle farm and it's a cattle business. And if I just look at 10 cows in a herd and they all look beautiful, that doesn't mean the whole herd is beautiful.

I have to look at the whole herd to make a decision whether that herd of cows is a beautiful set of cows. You don't just look at 10, you look at everything.

MS. LEWIS:

Q. Number 8 on Exhibit A asked about your CV, and I believe I have your CV that you looked at just a minute ago; correct, that you provided to Mr. Gordon?

A. Yes, ma'am.

Q. Your CV is up to date and current; correct?

A. Yes, ma'am.

Q. Number 9 asks for an engagement agreement. What I understood from counsel's earlier response to the subpoena is that you don't have an engagement agreement with counsel; is that correct?

A. Ma'am, I don't know what an engagement agreement is.

Q. A written agreement saying I agreed to do XYZ for X payment. Do you have a written agreement?

A. You mean my fee schedule?

Q. It could be a fee schedule. Do you call that an engagement agreement?

A. I don't speak in those terms so I'm -- if you show me an engagement agreement I'll tell you whether it's accurate.

Q. Do you have a fee schedule?

A. Yes, ma'am.

Q. Did you bring it with you?

Hospital.
Q. But it's still a separate --
A. It's a separate building.
Q. -- facility?
A. It's a separate facility.
Q. At that facility was Bair Hugger patient warming units used in the operating room?
A. And it still is.
Q. So was and still is; correct?
A. Yes, ma'am; however, not with me.
Q. Do you use the -- all right. So for Forrest General Hospital you started -- you know for sure Forrest General Hospital was using Bair Hugger in early 2000s?
A. Yes, ma'am.
Q. You don't know exactly which year; correct?
A. No, I don't.
Q. Does Forrest General Hospital still use Bair Hugger, to your knowledge?
A. Yes, ma'am.
Q. In orthopedic surgeries?
A. Not in my orthopedic surgeries.
Q. In orthopedic surgeries, just not yours?
A. That's correct.

Q. For Orthopedic Institute, it still uses Bair Hugger; correct?
A. Yes, ma'am, but not in my surgeries.
Q. But in other ortho surgeries, Orthopedic Institute, which is now a part of Forrest General, still uses Bair Hugger; correct?
A. Yes, ma'am.
Q. How long -- let me ask this question: When did you stop using Bair Hugger at Forrest General Hospital?
A. The best that I can determine by looking back at my practice, it was probably in the fall of 2015, and that would have been everywhere.
Q. In the fall of 2015 you individually stopped having the anesthesiologist use Bair Hugger patient warming devices for your patients at both Forrest General Hospital and Orthopedic Institute; correct?
A. Yes, ma'am, to the best of my recollection.
Q. How many surgeons in your group, Southern Bone and Joint Specialists?
A. It's approximately -- it's 13, 14, somewhere in there.
Q. Surgeons?

A. Yes, ma'am.
Q. Performing orthopedic procedures?
A. Yes, ma'am.
Q. Has any other surgeon in your group stopped using Bair Hugger?
A. I believe there's a spine surgeon that's not using it, but I would have to check on that.
Q. All the others do continue to use Bair Hugger for their orthopedic procedures?
A. Yes, ma'am.
Q. So 11 of the 13 --
A. We'll have to look at the list of my partners --
Q. Okay.
A. -- but it's somewhere in there.
Q. Let me finish my question first before you give your answer. So 11 of the 13 orthopedic surgeons in your group continue to use the Bair Hugger patient warming system in their orthopedic procedures; correct?
MR. GORDON: Object to form.
A. Yes, ma'am, and the spine surgeon I believe does not use it on his spine surgery cases but he might use it on other cases.

MS. LEWIS:
Q. And those cases that your partners continue to use the Bair Hugger includes arthroplasty procedures; correct?
A. Yes, ma'am.
Q. From early 2000s until fall of 2015, you were using the Bair Hugger; correct?
A. Yes, ma'am, I was using it until I stopped.
Q. During that time period did your incidence of surgical site infections increase?
A. Repeat your question.
Q. During the time you were using -- or Bair Hugger patient warming systems were used on your patients from early 2000 until you stopped using -- or having the Bair Hugger used for your patients in the fall of 2015, did you have a higher incidence of surgical site infections?
MR. GORDON: Object to form, vague as to time, assumes facts not in evidence. Go ahead.
A. Yes, ma'am, I did. In fact, that's why I'm sitting here. Probably around late 2014, early 2015, I began really in earnest having concerns about the Bair Hugger.

when did you first notice an increase, that you were having a higher incidence of surgical site infections? That's what you've said -- that's what you've said, you started noticing that you had a higher increase. I'm just trying to pinpoint when did you start noticing that?

MR. GORDON: Objection to form. He didn't say a higher increase, you said that. He said unacceptable rate. You're misstating his testimony, it's improper.

A. Yes, ma'am. I believe I didn't say higher increase, but if the record shows I did --

MS. LEWIS:

Q. I think you said a higher incidence.

A. An incidence that's unacceptable to me. The national norm of infection rate is unacceptable to me.

Q. I understand that.

A. And so I'm not looking at -- I'm not looking at rate, rates of increase. I'm looking at infections. And if it's above zero, I don't like it. So I'm trying to get my infection rate, particularly for implant surgeries, down to zero. I think it's possible to get down to zero.

So my point is I think you're misunderstanding my -- the way I looked at my patient population.

Q. No --

A. I --

Q. Go ahead.

A. I basically want to try to get it to zero. So when I looked at years where there were levels that were, to me, out of the norm, which is above zero for me, I look at the operating room, I look at the whole picture and try to figure out how can I get that down to zero.

Q. When did you notice numbers were out of the norm for you?

A. For me, probably any year I saw infections.

Q. Can you give me a year?

A. No, ma'am, I can't. I can't tell you exact years because I don't have that -- I don't have my hospital records in front of me.

Q. So from early --

A. But there's definitely years.

Q. So from early 2000 until fall of 2015 --

A. Uh-huh.

Q. -- you noticed a higher incidence or

numbers out of the norm for patients -- for your patients; correct?

A. Yes, ma'am.

Q. And you can't give me an exact date when; correct?

A. There were several years in that period from 2005, particularly to 2014, where there were blips of infection that were unacceptable to me. There were years that were unacceptable to me, and those years are years that I really looked at to see if I could figure out what was going on.

So when you average all those years from 2005 to 2014, the average -- the infection rate was above zero. When you look at 2015 and beyond, it's zero. What I changed was getting Bair Hugger out of the operating room. Everything else stayed the same. Antibiotic prophylaxis, everything.

The staff who I've been involved with -- I've also been chief of staff and I'm about to be chief of staff again. I'm very involved with the training of staff. And part of that training is to make them scrupulous about infection control. So that continued, as well.

So I'm always looking at ways to make us

better. And so the bottom line is when you average those years, it's above zero. When you average after 2015 and beyond, it's zero.

Q. Did you ever suspect that those out of norm numbers were due to the Bair Hugger?

A. That began -- that's what I was talking about, my journey beginning late 2014. That's when I really started to look at it in earnest.

Q. Did you think in 2014 that the Bair Hugger was causing your patients infections?

A. That's when I started to look at it. And when I first started looking at it I did not make that call. That's because I had not appreciated the forest yet.

Q. So in 2014 you did not think that the Bair Hugger was causing your patients' surgical site infections?

MR. GORDON: Object to form, he didn't say that, misstates his testimony.

A. I don't think any scientist will make a call before they've looked at the whole picture. So when somebody does a study they have a hypothesis, and my hypothesis -- and we're looking at in 2014 after I looked in -- started looking into it, was

such that its findings on PJI rates cannot be considered conclusive.

Q. Do you agree or disagree with that sentence?

A. I agree, going back again -- I know I'm wearing this topic out. Going back to the forest, McGovern is a tree in the forest and it cannot be considered authoritative on its own. What is authoritative is the forest.

So I believe that this review is really making a error in hanging their hat on that study.

Q. Do you agree that the McGovern study has serious limitations?

A. I believe that the McGovern study, much like most studies, have confounding variables. And it is essentially impossible to create a perfect study.

Q. So you agree the McGovern study has some limitations?

MR. GORDON: Objection to form, asked and answered, argumentative.

A. I believe it has some confounding variables that make it like all studies, not perfect. And I think it's ridiculous for anybody to assume that a

study is perfect, which is why you don't call a substudy authoritative in and of itself because in the early days of tobacco, I'm sure we can point to studies which were, quote, authoritative that said tobacco did not cause lung cancer. We know that not to be true.

So this is why you don't make mistakes on hanging your hat on one study. I don't hang my hat on McGovern. If McGovern didn't exist I would still be sitting here today.

MS. LEWIS:

Q. Do you agree that the McGovern findings on PJI rates cannot be considered conclusive?

MR. GORDON: Objection to form.

A. The same answer applies that you cannot hang your hat on one study. I think the study is very important. The decreased infection rate that he found actually mirrors my own practice. I have a decreased infection rate without the use of Bair Hugger.

Augustine has also said the same thing and I believe there are -- this shows -- this is something that's really interesting about medicine is you read a study and you look at your own

practice, your own real world practice and you say wow, I'm seeing that in my own practice. That also gives you -- that gives that study credibility.

That's why you don't look at the study by itself. You have to put it in the context of real world, not a piece of paper.

MS. LEWIS:

Q. Do you agree, then, that the McGovern study cannot be considered conclusive?

MR. GORDON: Objection to form, argumentative, asked and answered.

A. I believe that it is a very important study that has very important findings. And I think that it is a tree in the forest that when it is taken into the context of other studies, clinical practice, patient findings, that altogether there is conclusive evidence that the Bair Hugger is a dangerous device.

MS. LEWIS:

Q. I didn't ask you about the Bair Hugger being a dangerous device in all of the studies put together, I asked about McGovern. Do you think the findings in McGovern cannot be considered conclusive?

MR. GORDON: Objection, asked and answered, argumentative. He can answer the question the way he sees fit, Counsel. You just didn't like the answer.

A. Much like how the ECRI is stating that they will continue to monitor, which means that they're saying that their findings aren't conclusive because they will continue to monitor the issue and change and amend their findings as indicated, as necessary. So they're being honest that they're open -- they're leaving it open, that they could be wrong.

So this is an example of why scientists don't like to use the word "authoritative" or "conclusive". That's -- those might be words that are used by attorneys sitting around a deposition table, but those aren't words that scientists throw out very often because you always want to look at other evidence, you always want to understand that other studies are coming around the corner and you don't want to be boxed in.

So I'm not going to say that any of those studies are conclusive.

MS. LEWIS:

Q. Including McGovern?

its potential impact but they do not provide sufficient evidence to demonstrate that the use of forced-air warming poses a greater risk of SSIs or PJIs than the use of other warming methods.

MR. GORDON: That's what he's been saying.

MS. LEWIS:

Q. Did I read that right?

A. Yes, you read that right.

Q. Do you agree or disagree with that?

A. I believe if you look at the studies in conjunction with the way I look at this issue, I will disagree with that statement.

Q. Okay.

A. But I'm not going to take that statement by itself because I look at the whole issue, which includes the review of the literature, which includes the review of my practice, which includes the review of the OR and how it's set up, which includes the review of the people in the OR and how they're acting and approaching a patient.

It includes a review of the anesthesiologists and how they're setting up their situation at the front of -- at the end of the table

or at the head of the table. It's a review of the air handling systems, talking to the engineers on how they are functioning in the operating room.

It is a review of my own patient base. It is me talking with a patient in my clinic room. It's all of those things put together and the articles are just a big part, but they're a part of it. And that's how I come to my decision.

And so when I put it all in that context, I would disagree with that. But I'm sure these authors would like to know that that statement is being put in a context.

Q. You ready to move on?

A. Yes, ma'am.

Q. The next sentence says consequently -- do you see where I am?

A. I'm listening, yeah.

Q. Consequently, ECRI Institute does not believe that the currently available evidence justifies discontinuing the use of forced-air warming during surgery.

Did I read that right?

A. Yes, ma'am.

Q. Do you agree or disagree?

MR. GORDON: Objection.

MS. LEWIS:

Q. Sounds like you're going to say you disagree?

MR. GORDON: Objection to form and taking one sentence out of context.

A. Well, I don't disagree that the ECRI Institute had made that statement, but if I were to make that statement it would read differently.

MS. LEWIS:

Q. No, I didn't ask if they made the statement. We can see they made the statement. I'm asking do you agree with their conclusion that it does not believe the currently available evidence justifies discontinuing the use of forced-air warming during surgery?

MR. GORDON: Same objection.

A. Well, they did say ECRI Institute does not believe is why I'm agreeing that the ECRI Institute does not believe that forced-air warming should be -- that there's sufficient evidence to discontinue forced-air warming. I believe that ECRI believes that. So I understand --

MS. LEWIS:

Q. I'm not asking --

A. I know. I know. Let me finish.

Q. Do you believe it or not? Do you agree or not?

A. And so in the context of what I just said just prior to this without repeating it again, I believe there is sufficient evidence to make a conclusion that the forced-air warming device should be removed from all ORs in orthopedic cases.

Q. Since what you just said is inconsistent with what they're saying, that means you disagree with their --

A. With --

Q. -- their sentence in conclusion that they do not believe the evidence, current evidence justifies discontinuing the use?

MR. GORDON: Objection to form, argumentative, asked and answered.

MS. LEWIS:

Q. Correct?

A. Within the context of the way I look at this issue, I disagree with their statement.

Q. Doctor, I have put in front of you Exhibit Number 4 and it reads, perioperative standards and

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Do you see that?

A. Yes, ma'am.

Q. Did I read that correctly?

A. You did.

Q. You disagree with that?

A. I disagree that it's reasonable to continue, yes, ma'am.

Q. It goes on to say, indeed, our data and that collected by NHSN suggests that approximately 99 percent of patients undergoing joint replacement procedures do not develop a SSI despite the fact that forced-air warming warming devices continue to be widely and appropriately used.

Did I read that right?

A. That's correct.

Q. Do you think 99 percent of patients undergoing joint replacement procedures is accurate?

MR. GORDON: Objection to form, out of context.

A. That's a debatable number. It's -- I believe I used two percent, but that's one to two percent. So we can say 98 to 99 percent, I'm not going to quibble.

MS. LEWIS:

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Q. Okay.

A. I believe that that argument is really faulty, though.

Q. What argument, that you just said you agreed to?

MR. GORDON: He didn't say agree, he said he agrees to the percentage.

A. No, the argument that do not develop an SSI despite the fact that forced-air warming devices continue to be widely and appropriately used. So they're basing the argument that it's okay because 99 percent are not getting infections.

MS. LEWIS:

Q. So you disagree with that?

A. If I may finish. The argument is, is that because 99 percent are not being damaged, therefore, the Bair Hugger is not a damaging device, that's a really -- that's a really dicey way to look at this because it's -- basically in my expert report I wrote about bullets on a battle field. Just because soldiers didn't get shot in a battle doesn't mean that there weren't dangerous bullets on the battle field.

Just because she swam in shark infested

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water and didn't get eaten by a shark doesn't mean that there weren't sharks in the water. So --

Q. So you disagree?

MR. GORDON: Let him finish.

A. Ma'am, may I finish? The 99 percent argument is the same thing. Just because 99 percent didn't get a infection, which there is data that makes you question whether that was one to two percent numbers even, just because 99 percent got away without having an infection is not an argument to say that the Bair Hugger is not dangerous.

It's the bullets on the battle field, it's the shark infested waters. It's the same type of thing. You cannot make that conclusion based on that number. Looking at it that way, you just can't. So that's what I disagree with.

MS. LEWIS:

Q. A long way of saying you disagreed, which was the question I asked, do you agree or disagree. So you disagree.

All right. Conclusions, do you see where I am?

A. Yes, ma'am.

Q. We continue to believe that it is

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reasonable and appropriate to use forced-air warming warming devices to maintain normothermia as these devices are the only devices proven to decrease the risk of developing a postoperative infection.

Did I read that right?

A. Yes, you did.

Q. Give me the short version of do you agree or disagree with that statement?

MR. GORDON: Objection to form.

A. Well, ma'am, I can't always give a short version because you have to put things in context. But that is a very loaded statement because, as I've said here, unless you show me the studies, there's no definitive study, which again, I don't hang my hat on one study, but this is what they're talking about, they're looking for smoking guns.

The studies showing that forced-air warming decreases infection rates in orthopedics, in total hips and total knees, that study is not out there. In fact, to the contrary. The Frisch study in 2017 shows that hypothermia actually did not cause complications in orthopedics, which includes infections.

And so this is a -- this is something that,

patient treating experience, my expertise in the operating room, my expertise in doing surgery on patients, my understanding of the whole forest. Those are things that I'm assuming Ben knew about me and thought I would be important.

Q. You did come up with some opinions in this case; right?

A. Yes, ma'am.

Q. And you have relied on certain documents for your opinions; is that fair?

A. That is fair.

MR. GORDON: Object to the form.

MS. LEWIS:

Q. Can you tell me all the documents that support the opinions that you have in this case and then we'll go through the documents, but first can you --

MR. GORDON: Before we get into that, it's going to be kind of lengthy, we've been here since lunch for an hour and a half, almost two hours. Can we take a break?

MS. LEWIS: Do you need to take a break?

THE WITNESS: I would like to.

MS. LEWIS: Sure.

VIDEOGRAPHER: Off the record at 2:56 p.m.

(Off the record.)

VIDEOGRAPHER: Back on record at 3:03 p.m.

MS. LEWIS:

Q. Dr. Stonnington, just before the break we were talking about the fact that you have come up with opinions in this case and I was asking you a question that I wanted you to identify for me all the support in terms of documents that you believe support your opinions.

So can you name for me all the documents or studies in which you either rely or claim support your opinions and then we'll go through them?

MR. GORDON: You mean other than all the things he's talked about already or the things that are in his report or that he brought with him today and gave you?

MS. LEWIS:

Q. I just want you to name for me the studies and/or documents that you believe support your

opinion.

A. Well, that goes back to the whole idea of what's authoritative, which I think you have to understand that I'm looking at this like a forest and so there's no one particular document by itself that is going to be what is a smoking gun for me. And again, I believe the smoking gun theory is not reliable and not a safe way to look at this issue.

What I have done is I've looked at my own practice, I've looked at the operating rooms, I've looked at my results, I've looked at how I do surgeries and looked at my own clinical training. Looked at what's standard protocol. Looked at what's proper procedure and I've looked at journal articles.

And you have a binder there that some are counterpoints and some are pro points, for lack of a better way of saying it. But what I don't want to do is throw out articles and have you or a jury member or the judge think that I'm relying on that one article to make my opinions, I'm not. I'm relying on the forest.

I think it's very dangerous to look at one article or look at one surgery result and make --

try to make a definitive conclusion. That's not what I've done. So that's I think the best way to answer that question.

Q. Are you able to tell me whether you relied on the Albrecht study for your opinion?

MR. GORDON: Object to the form, use of the word "reliance" and asked and answered.

A. I will say that orthopedic surgeons like myself who are board certified will look at an issue like I looked at an issue and come to conclusions, but it would be reckless to take one tree out of the forest and say because of that tree I'm going to make this statement.

So I can name for you some trees and there's a lot of trees in that binder right there. And I believe you know what those trees are. So I think it's important to know that that's a binder full of trees. And I think I've made that argument very clear already.

MS. LEWIS:

Q. You've testified that the Bair Hugger is dangerous and causes infections; right?

A. Yes, ma'am.

Q. Tell me what is the support for those -- for that opinion?

A. Again, looking at the forest, I can look at my own practice and that's very important to look at my own practice, to look at my own house, which is real world. Before Bair Hugger -- well, actually with Bair Hugger I had above zero percent infection rate, after Bair Hugger I have no infection rate. All things were kept the same.

I think that's very powerful. That's a -- that's quite a few trees in the forest.

Q. Anything else that's the basis for your opinion that the Bair Hugger is dangerous and causes infection?

MR. GORDON: Objection to form, separate and apart from all the other things he said today about this process with this.

A. Well, again, that binder is full of trees. And there are some very important trees in that binder. And I would say they're all important and so that forest is -- again, is made up of a lot of trees and there's lots of ways that -- lots of -- there's a multi-faceted approach that I've taken to

come to this conclusion that the Bair Hugger is dangerous.

And it's based in the literature, it's based in my practice, it's based in my clinical training, it's based on what's proper procedure, it's based on what's standard of care.

MS. LEWIS:

Q. What literature are you referring to?

A. So if you want to go look at trees, the literature trees, for lack of a better way of saying it, there's Darouiche, there's the Albrecht, there's Reed, there's Legg and Hamer, there's -- amongst many others. They're -- you know, I also looked at laminar flow issues.

MR. GORDON: You can refer to your list if you need to, Doctor.

A. And the Stocks article, Avidan article and Birgand, amongst many others.

MS. LEWIS:

Q. I need you to name them for me.

A. Well, you have a list in front of you.

Q. Well, you need to name for me the ones on which you relied that support your opinion --

A. I don't rely --

MR. GORDON: Whoa, whoa, Doctor.

MS. LEWIS:

Q. Let me finish my question.

MR. GORDON: She's got to finish and I've got to object.

MS. LEWIS:

Q. I need you to name for me the literature that you said supports your opinion that the Bair Hugger is dangerous and causes infections.

MR. GORDON: Okay.

MS. LEWIS:

Q. So you've started your list of literature, I need you to complete your list for me.

MR. GORDON: I would object to the form and to the extent that he's asked and answered this in his own way a variety of times and said it's not just the papers, the articles, that's one -- he points one, trees he says a thousand times, but if you want him to list more articles that support his conclusion, I'm sure he can do that.

A. I wasn't aware you wanted me to go through all of them because you have a binder full, but I'll be happy to. So the -- I'm just going to go through

it as I look at it.

And these are important trees, they're not the only trees, and I don't want to you interpret that these are the articles like they're smoking guns because I don't know how many times I have to say this, these are not smoking gun articles.

Everything has to be taken in its entirety and context and put together to create that forest. And so --

MS. LEWIS:

Q. I want the literature that supports your opinion that the Bair Hugger is dangerous and causes infection. That was my question.

A. Correct. And the way I look at the literature is if there are very salient points in the article that I believe are -- create a very important tree, then I'm going to list that article. Even though you may think the conclusion of that article is supportive of a safe -- of the Bair Hugger being safe.

Q. Doesn't matter what I think at this point.

A. No, I just --

Q. I want you to list for me all the literature that you believe supports your opinion